

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICARDO GUTIERREZ,
Plaintiff,
-v-
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

21-CV-3211 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

The Clerk of Court shall notify the U.S. Attorney's Office of the Southern District of New York of the filing of this *pro se* case, brought pursuant to 42 U.S.C. § 405(g), for which the filing fee has been waved. In accordance with this District's Standing Order governing challenges to denials of social security benefits (*see In re: Mots. J. Pleadings Social Sec. Cases, 16-mc-171*), the following briefing schedule applies:

- **Within 90 days of service**, the Commissioner must serve and file the Electronic Certified Administrative Record (e-CAR), which constitutes the Commissioner's answer, or otherwise move against the complaint.
- If Plaintiff wishes to file a motion for judgment on the pleadings, Plaintiff must do so **within 60 days** of the date on which the e-CAR was filed. The motion must contain a full recitation of the relevant facts and a full description of the underlying administrative proceeding.
- The Commissioner must file an answer brief **within 60 days** of the filing of Plaintiff's motion.
- Plaintiff may file a reply **within 21 days** thereafter.

In addition, by separate Order today, the Court is referring this case to the assigned Magistrate Judge for a report and recommendation on any motion for judgment on the pleadings.

Magistrate Judges are judges selected by the District Judges to serve for terms of eight years.

They are very experienced and highly qualified.

To conserve resources, to promote judicial efficiency, and in an effort to achieve a faster disposition of this matter, it is hereby ORDERED that the parties must discuss whether they are willing to consent, under 28 U.S.C § 636(c), to conducting all further proceedings before a Magistrate Judge. If the parties consent to having the Magistrate Judge decide the case, the Magistrate Judge will replace the District Judge, which will speed up the resolution of the case as only one judge will be involved instead of two. Any appeal from a Magistrate Judge's decision goes directly to the United States Court of Appeals for the Second Circuit, just as an appeal from a District Judge's decision would be. If the parties do not consent to having the Magistrate Judge decide the case, on the other hand, then the Magistrate Judge will issue a report and recommendation on any motion for judgment on the pleadings, and the District Judge will consider any objections either party has to that report before a final judgment is entered.

If both parties consent to proceed before a Magistrate Judge, counsel for the defendant must, within two weeks of the date on which Defendant enters an appearance, email to Oetken_NYSDChambers@nysd.uscourts.gov a fully executive Notice, Consent, and Reference of a Civil Action of a Civil Action to a Magistrate Judge form, which is attached to this order and also available at <https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf>. If the court approves that form, all further proceedings will then be conducted before a Magistrate Judge rather than before me.

If either party does not consent to conducting all further proceedings before a Magistrate Judge, the parties must file a joint letter, within two weeks on which Defendant enters an appearance, advising the Court that the parties do not consent, but without disclosing the identity

of the party or parties who do not consent. If you do not consent to having a Magistrate Judge decide your case, there will be no adverse consequences.

The Clerk of Court is directed to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: June 1, 2021
New York, New York



J. PAUL OETKEN
United States District Judge

UNITED STATES DISTRICT COURT
for the

Plaintiff)
v.) Civil Action No.
Defendant)

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Printed names of parties and attorneys

Signatures of parties or attorneys

Dates

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date:

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.